

Panaji, 23rd June, 2005 (Ashada 2, 1927)

SERIES II No. 12

# OFFICIAL GAZETTE



## GOVERNMENT OF GOA

### SUPPLEMENT

#### GOVERNMENT OF GOA

#### AWARD

Department of Labour

#### Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 30-7-2004 in reference No. IT/105/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, September, 2004.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/105/99

Shri Ganesh A. Shet Mandrekar,  
Deulwada,

Madrem-Goa.

V/s

M/s. Sagun Extrusions Limited,  
Thivim Industrial Estate,  
Plot No. 2, Karaswada,  
Mapusa-Goa.

Workman/Party I

Employer/Party II

Workman/Party I - Represented by Shri Subhas Naik.

Employer/Party II - Represented by Adv. Shri S. K. Manjrekar.

Panaji, dated 30-7-2004.

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 1st September, 1999 bearing No. IRM/COM/MAP/(72)/99/4246 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Sagun Extrusions Ltd., in terminating the services of their workman Shri Ganesh A. Shet Mandrekar with effect from 8-2-1999, is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/105/99 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "Workman") filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that the Employer/Party II (for short, "employer") is having a factory situated at Tivim Industrial Estate, Karaswada, Bardez-Goa and it is engaged in the business of manufacturing of packaging materials of various types, lamination work, printing work, slitting work, etc. That the workman was employed as a Helper with the employer since November, 1995 and his services were confirmed from 1st May, 1998 and on confirmation he was paid monthly salary of Rs. 1100/-. That the workers of the employer became the members of the union called Kamgaranchho Ekvott and vide letter dated 8-5-98 the management was informed about the unionisation of the workers. That as soon as the employer came to know about the formation of the union by the workman, the employer on 13-5-98 refused employment to Shri C. S. Dewedi,

the President of local union committee. That said Shri Dewedi approached Kamgarancho Ekvott and the said union raised the dispute and the same was referred to this Tribunal for adjudication under reference No. IT/67/99. That the workman worked continuously with the employer till 7-2-99 and on 8-2-99 when he reported for work as usual, Ms. Sharmila D'Souza, the Manager of the employer told him not to come for duty from that day onwards and no reasons were assigned for the same nor notice of one month was given, nor one month's wages in lieu of wages was given nor retrenchment compensation was paid. That the employer did not follow the principle of "last come, first go". The workman contended that termination of service by the employer is in violation of the principles of Sec. 25F, 25G and 25H of the Industrial Disputes Act, 1947. The workman contended that after termination of his services the employer has recruited new employees in his place. The workman contended that since termination of his service is illegal and unjustified he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer stated that at no point of time the services of the workman were terminated. The employer stated that the union has no authority to represent the workman, as the workman is not the member of the said union. The employer stated that the workman was issued a transfer letter dated 27-1-99 transferring him to its associate concern namely Rolls Pack at Pune and he was required to report for work at Pune on 8-2-99. The employer stated that the workman did not report at the place of transfer and the letter of transfer which was given to him was refused by him to accept the same on 30th January, 1999. The employer denied that employment was refused to Shri Dewedi or that he was a President of the local committee. The employer denied that on 13-5-98 Shri Dewedi reported for work or that the security did not allow him to report for work or that the security was instructed not to allow him to report for duty. The employer stated that Shri Dewedi was suspended pending enquiry as he had committed serious misconduct. The employer denied that the workman reported for work on 8-2-99 and stated that since he was transferred at Pune, the question of his reporting for work on 8-2-99 did not arise as also the question of paying notice pay and retrenchment compensation did not arise as it is a case of transfer and not termination of service. The employer denied that the provisions of Sec. 25F, 25G and 25H applied to the workman. The employer denied that new employees have been recruited in the place of the workman. The employer stated that the reference is not maintainable as the dispute involved is not of termination of service of the workman but it is case of transfer. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed his rejoinder at Exb. 6.

4. On the pleadings of the parties, following issues were framed at Exb. 7.

1. Whether the Party I proves that the Party II terminated his services from 8-2-99 malafidely and by way of victimisation ?
2. Whether the Party I proves that termination of his services by the Party II is in violation of the provisions of Sec. 25F, 25G and 25H of the Industrial Disputes Act, 1947 ?
3. Whether the Party I proves that the action of the Party II in terminating his services w. e. f., 8-2-1999 is illegal and unjustified ?
4. Whether the Party II proves that the reference is bad in law and not maintainable for the reason stated in para A to E of the written statement ?
5. Whether the Party I is entitled to any relief ?
6. What Award ?

5. My findings on the issues are as follows:

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|--------------|---|
| Issue No. 1: | In the negative.  |
| Issue No. 2: | In the affirmative as regards provisions of Sec. 25F of the I.D. Act, 1947. |
| Issue No. 3: | In the affirmative.   |
| Issue No. 4: | In the negative.  |
| Issue No. 5: | As per para. 15 below   |
| Issue No. 6: | As per order below.   |

#### REASONS

6. Issue Nos. 2: The Contention of the workman is that he reported for work on 8-2-99 but the Manager of the employer namely Miss Sharmila D'Souza told him that he should not work from that day and he was not allowed to report for work. His contention is that no reasons were given for terminating his services, nor he was given one month's notice, nor notice pay, nor retrenchment compensation. His contention is that the employer did not follow the principles of "last come, first go" and that also after termination of his service new person was recruited in his place. The contention of the employer on the other hand is that, there is no termination of the service of the workman but he did not report for work at the place of his transfer, that is its associate concern namely Rolls Pack, at Pune from 8-2-99.

7. In the present case only the workman has led evidence by examining himself. The employer has not led any evidence though several opportunities were given. The workman in his evidence stated that he was employed with the employer as a Helper from November 1995 and that he was confirmed in service with effect from 1st May, 1998. He has produced the confirmation order dated 6th June 1998 at Exb. W-1. He has stated that he worked with the employer till

7-2-99 and on 8-2-99 when he reported for duty he was called by the Manager Mrs. Sharmila D'Souza and he was told by her that he should not work from that day. He has stated that he was not told the reasons for terminating his services, nor he was given letter of termination of service nor he was given one month's pay nor retrenchment compensation. He was stated that no seniority list was prepared by the employer. He has stated that he was the member of the union, "Kamgaranchho Ekvott" and that the said union had written letter to the employer. He has produced the minutes of the conciliation proceedings dated 1-7-99 at Exb. W-2 wherein failure is recorded. In the cross examination of the workman the employer did not dispute that the workman was employed from November, 1995. The employer admitted the confirmation order dated 6-6-98 produced by the workman at Exb. W-1. The workman admitted that, as per clause 4 of the confirmation order he was liable to be transferred at any time from one job to another, from one department to another, or from one post to another and also that he was liable to be transferred to any other firm or company owned by the employer by any of its associates in India. He stated that he is not aware if the employer was having one more company by name M/s. Rolls Pack at Pune. He denied that he was transferred to M/s Rolls Pack at Pune by letter dated 27-1-1999 because the employer had no work in Goa. He denied that he refused to accept the said letter and therefore it was sent to his residential address by registered post, and that he did not accept the said letter and therefore it was returned with remark unclaimed. He admitted that the address mentioned on the envelope which is shown to him containing the remark, "unclaimed-return to sender" is his correct residential address. He denied that his services were not terminated. He denied that he refused to accept the transfer order dated 27-1-99. He admitted that the factory of the employer is presently closed.

8. The above evidence supports the contention of the workman that he was working with the employer as a Helper since November 1995, and that he was confirmed in service w.e.f., 1st May, 1998. The employer had taken a specific defence that the services of the workman were not terminated by refusal of employment to him but he was transferred at Pune in its sister concern where he failed to report for duty from 8-2-99. The employer has totally failed to prove this fact in the evidence of the workman. The workman has denied that he had received any letter dated 27-1-99 from the employer transferring him at Pune. He has also denied that he refused to accept the transfer order. As mentioned earlier the employer has not led any evidence in the matter. Therefore there is absolutely no evidence to prove that the workman was transferred at the sister concern of the employer namely M/s. Rolls Pack at Pune and that he failed to report there from 8-2-99. In the absence of any evidence from the employer that the workman was transferred at its sister concern

M/s Pack at Pune and he failed to report there on 8-2-99 the contention of the workman that his services were terminated by the employer by refusing employment to him w.e.f., 8-2-99 is liable to be believed and accepted. The Bombay High Court in the case of Gangaram Medekar v/s Zenith Safe mfg. Co., reported in 1996 I CLR 172 has held that if it is case of word against word, then the benefit should go to the workman and not to the employer. I therefore hold that the workman has succeeded in proving that the employer terminated his services w.e.f., 8-2-99.

9. Now it is to be seen whether there is violation of Sec. 25F of the Industrial Disputes Act, 1947 in terminating the services of the workman. Sec. 25F comes into play only if the termination of service amounts to retrenchment. Therefore it is to be seen whether the termination of service of the workman by the employer amounts to retrenchment. "Retrenchment" is defined in Sec. 2 (00) of the Industrial Disputes Act, 1947. As per the said section retrenchment means termination of service of a workman otherwise than as a punishment inflicted by way of disciplinary action. The exception laid down under section 2 (00) of the Act, are (a) voluntary retirement of the workman or (b) retrenchment of the workman at reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, or (bb) termination of service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained there in or (c) termination of service of a workman on the ground of continued ill-health. In the present case the termination of service of the workman was not as a matter of punishment inflicted by way of disciplinary action. The workman's case also does not fall within the exceptions laid down under Sec. 2 (00) of the Industrial Disputes Act, 1947. The Supreme Court in the case of Santosh Gupta v/s State Bank of Patiala reported in 1980 II LLJ 72 has held that every type of termination of service of a workman except of the types specifically excepted amounts to retrenchment. Therefore in my view the termination of services of the workman amounts to retrenchment as defined under Sec. 2(00) of the Industrial Disputes Act, 1947.

10. Sec. 25F of the Industrial Disputes Act, 1947 lays down the procedure to be followed by the employer for retrenching the services of a workman. As per the said provisions the services of the workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of such notice and he has been paid compensation at the rate of 15 days average wages for each completed year of continuous service or any part thereof in excess of six months. The above conditions

are conditions precedent to retrenchment. Sec. 25B(2) of the Industrial Disputes Act, 1947 defines continuous service. As per the said provision a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 190 days in the case of a workman employed below ground in a mine and 240 days in any other case. In the present case admittedly the workman was not employed below ground in a mine. The workman had stated in his claim statement that he was employed from November, 1995 and he was confirmed from 1st May, 1998. The employer in the written statement did not deny this statement of the workman. The employer in the evidence of the workman also did not deny the statement of the workman that he was employed from November, 1995 and he was confirmed from 1st May, 1998. The services of the workman were terminated from 8-2-99. There is no evidence to show that the workman was given break in service at any time. It is therefore established that the workman worked with the employer for more than 240 days prior to the date of termination of his services. Therefore the provisions of Sec. 25F of the Industrial Disputes Act, 1947 applied to the workman. The workman in his evidence has stated that he was not given one month's notice, nor he was paid notice pay in lieu of notice nor he was paid retrenchment compensation. There is no denial to this statement of the workman from the employer nor there is any evidence to the contrary. I, therefore hold that there is no compliance of Sec. 25F of the Industrial Disputes Act, 1947 from the employer. The workman has contended that the termination of his service is also in violation of the provisions of Sec. 25G and 25H of the Industrial Disputes Act, 1947. It is the contention of the workman that the employer did not follow the principles of "first come, last go" while terminating his services and also that new persons were recruited in his place. However no evidence has been produced by the workman in support of his above contentions. There is no evidence from the workman to show that besides him there were other workmen who were working as slitting operators Grade II in which post he was confirmed. Also there is no evidence from him to prove that after termination of his service the employer employed new persons in his place. I, therefore hold that the workman has failed to prove that the termination of his service is in violation of the provisions of Sec. 25F and 25H of the Industrial Disputes Act, 1947. In the circumstances, I hold that the workman has succeeded in proving that the employer terminated his services with effect from 8-2-99 in violation of the provisions of Sec. 25F of the Industrial Disputes Act, 1947 but he has failed to prove that there is violation of the provisions of Sec. 25G and 25H of the Industrial Disputes Act, 1947. I, therefore answer the issue No. 2 accordingly.

11. Issue No. 1: The workman contended in the claim statement that the termination of his service is malafide and by way of victimisation. The burden was on the workman to prove this fact. The Supreme Court in the case of *M/s. Bharat Iron Works v/s Bhagubhai Patel and other* reported in AIR 1976 SC 98 has held that victimisation is a serious charge by an employee against the employer and therefore it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. The Supreme Court held that the fact that there is a union espousing the cause of the employees in legitimate Trade Union activity and an employee is a member or active office bearer thereof is, per se, no crucial thereof. The Supreme Court has held that the onus of establishing a plea of victimisation will be upon the person pleading it and that mere allegations, vague suggestions and insinuations are not enough. In the present case there are no proper pleadings from the workman nor any particulars of victimisation are given by the workman in his claim statement. The workman has not led any evidence to show that the termination of his service by the employer was malafide and by way of victimisation. The workman has totally failed to discharge the burden cast on him. I, therefore hold that the workman has failed to prove that the termination of his service by the employer is malafide and by way of victimisation. I, therefore answer the issue No. 1 in the negative.

12. Issue No. 4: Adv. Shri S. K. Manjrekar, representing the employer submitted that the reference is not maintainable because it is a case of transfer and not termination or refusal of employment. He further submitted that the workman has failed to prove that the Union Kamgarancha Ekvott had the authority to raise the dispute and represent him in the present case. While deciding the issue no. 2, it has been held by me that the employer has failed to prove that the workman was transferred to Pune vide order dated 27-1-99 and that he refused to report at the transferred place. It has been further held by me that the workman has succeeded in proving that his services were terminated with effect from 8-2-99 in violation of the provisions of Sec. 25F of the Industrial Disputes Act, 1947. The Government makes the reference of the dispute based on the allegations made by the workman and it is the duty of the Tribunal to construe the reference and bring out the real dispute for its decision. I am supported in my view by the judgement of the Bombay High Court in the case of *Sheshrao Bhaduji Hatwar v/s The Presiding Officer, First Labour Court & Ors.*, reported in 1990 II CLR 726. In this case the High Court has held that the mere wording of the reference is not decisive in the matter of tenability of a reference, and that it may contain the defence or not. The High Court has further held that if points of difference are discernable from the material before the Court or Tribunal, it has only one duty and that is to decide the points on merits and not to be astute to discover

normal defects in wording of the reference. Therefore there is no substance in the contention of the employer that the reference is not maintainable because it is a case of transfer and not termination of service in respect of which the dispute is referred by the Government.

13. The other contention which has been raised by the employer is that the workman has failed to prove that the Union Kamgarancha Ekvott had the authority to raise his dispute and represent him in the present case. There is no substance in this contention also of the employer. The document produced by the workman namely the letter dated 9-2-99 Exb. W-1 shows that the dispute was raised by the workman against the employer regarding his termination of service and not by the union Kamgarancha Ekvott. Also, in the present case there is nothing on record to show that the workman was represented by the union Kamgarancha Ekvott. The statement of claim filed by the workman has been signed by him and not by the union representative. Therefore the question of proving the authority of the union Kamgarancha Ekvott to raise the dispute on behalf of the workman or its authority, to represent the workman in the present case did not arise. I, therefore hold that the employer has failed to prove that the reference is not maintainable and is bad in law. Hence, I answer the issue no. 4 in the negative.

14. Issue No. 3: It is the contention of the workman that termination of his service by the employer with effect from 8-2-1999 is illegal and unjustified. While deciding the issue No. 2 it has been held by me that the workman has succeeded in proving that his services were terminated by the employer w.e.f. 8-2-1999 and that the employer has failed to comply with the provisions of Sec. 25F of the Industrial Disputes Act, 1947. Thus the termination of service of the workman is in violation of the provisions of Sec. 25F of the Industrial Disputes Act, 1947. The Supreme Court in the case of M/s. Avon Service Production Agency Pvt. Ltd., V/s Industrial Tribunal, Hariyana and others reported in AIR 1970 SC 170 has held that giving notice and payment of compensation is a condition precedent for valid retrenchment and failure to comply with the same renders the order of termination invalid and in-operative. Same principles are laid down by the Supreme Court in the case of Gammon India Ltd., V/s Niranjana Das reported in (1984) 1 SCC 509. In this case the Supreme Court has held that in the absence of compliance with the requisite of Sec. 25F, the retrenchment bringing about the termination would be void-ab-initio. Since in the present case the services of the workman were terminated in violation of the provisions of Sec. 25F of the Industrial Disputes Act, 1947, in view of the law laid down by the Supreme Court in the case of M/s. Avon Service Production Agency Pvt. Ltd., (Supra) and Gammon India Ltd. (Supra) the termination of service of the workman by the employer becomes illegal and unjustified. I therefore

hold that the workman has succeeded in proving that termination of his services by the employer w.e.f. 8/2/1999 is illegal and unjustified. I therefore answer the issue No. 3 in the affirmative.

15. Issue no. 5: This issue pertains to the relief to be granted to the workman. The Bombay High Court in the case of Sayyed Anwar V/s Divisional Controller, MSRTC, Aurangabad and others reported in 2000 (2) Bom. L.C. 388 has held that it is well settled that if an order of dismissal or termination or retrenchment is set aside as illegal, improper, the normal relief of reinstatement with full back wages must follow unless the employer pleads and proves and brings on record cogent material to enable the labour court to depart from the aforesaid normal rule. Therefore the ordinary or the normal rule is that when the termination of service of the workman is held to be illegal and unjustified, he is entitled to reinstatement in service with full back wages and continuity of service unless there are reasons which do not warrant reinstatement or full back wages, and these reasons should be just and reasonable. In the present case the workman in his cross examination admitted that the factory of the employer at Karaswada, Mapusa, where he was working, is presently closed. Thus the closure of the factory has been admitted. The above admission was made by the workman in his cross examination which was recorded on 24th September, 2002. The employer has not led any evidence to show from which date the factory is closed. In the absence of any evidence from the employer and in view of the statement made by the workman that presently the factory is closed and this statement is made by the workman in September, 2002, it would be proper to hold that the factory of the employer is closed from September, 2002. Since the factory is closed the question of granting reinstatement does not arise. However, the workman shall be entitled to full back wages from the date of termination of his service, that is, from 8-2-1999 till August 2002. Besides the said full back wages the workman shall be also entitled to closure compensation as it has been held by me that the factory of the employer is closed from September, 2002. In the present case there is no evidence to show that the provisions of chapter VB of the Industrial Disputes Act, 1947 applied to the employer and therefore what applied is the provisions of Sec. 25FFF of the said Act. As per the said section a workman who has been in continuous service of not less than one year before the date of closure is entitled to notice and compensation in accordance with the provisions of Sec. 25F of the Act as if the workman has been retrenched. In the present case the workman was employed from May, 1994, and his services were terminated from 8-2-99. The termination of service of the workman has been held by me as illegal and unjustified. Therefore the workman was in continuous service and hence he is entitled to compensation as provided under Sec. 25F of the Industrial Disputes Act, 1947: In the circumstances,

I hold that the workman is entitled to full back wages with all consequential benefits from the date of termination of his service, that is, from 8-2-99 till August, 2002 and the closure compensation as provided under Sec. 25F of the Industrial Disputes Act, 1947.

Hence, I pass the following order.

#### ORDER

It is hereby held that the action of the employer M/s. Sagun Extrusions Ltd., Karaswada, Mapusa, Goa, in terminating the services of the workman Shri Ganesh A. Shet Mandrekar with effect from 8-2-1999 is not legal and justified. M/s. Sagun Extrusions Ltd., shall pay to Shri Ganesh A. Shet Mandrekar full back wages with all consequential benefits from 8-2-1999 till August 2002 and the closure compensation as provided under Sec. 25F of the Industrial Disputes Act, 1947.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal,

#### Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 6-10-2004 in reference No. IT/77/97 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 19th October, 2004.

#### IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/77/97

Workmen,  
Rep. by Goa Trade &  
Commercial Workers Union,  
Velho's Building, 2nd Floor,  
Panaji-Goa.

... Workman/Party I

V/s

M/s. Christine Hoden (I) Pvt., Ltd.,  
2nd Arvalle Road,  
Cortalim-Goa.

... Employer/Party II

Party I/Workmen - Represented by Adv. Shri Suhas Naik.

Party II/Employer - Represented by Adv. Shri D. P. Bhise.

Panaji, dated: 6-10-2004.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 8th December, 1997 bearing No. IRM/CON/SG/(72)/92/6255 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Christine Hoden (India) Pvt. Limited Cortalim, Goa, in changing the hours of work of the shifts and thereby weekly working hours with effect from 30-9-1993 as per employer's notice dated 8-9-1993, is legal and justified.

If not, to what relief and compensation the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/77/97 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen/Party I (for short, "Union") filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the union are that the Employer/Party II (for short, "employer") is having a factory situated at Cortalim, Goa, and is manufacturing sanitary towels. That the employer is having several units at different parts of India including the one at Hubli. That the factory of the employer runs in 3 shifts and the timings of the shifts are from 8.00 a.m. to 4 p.m., from 4.00 p.m. to 12 midnight and from 00.00 hours to 8.00 a.m. with a lunch/dinner break of one hour in each shift and the general shift timings for the lady workmen is from 8.00 a.m. to 5.00 p.m. That in order to harass the workmen the employer started various tactics and one of them was increasing arbitrarily ½ hour work in all the three shifts for male workmen. That the employer in the month of October, 1993 stopped paying enhanced VDA which is highly illegal and unjustified. That the employer displayed a notice on the notice board dated 8-2-93 stating that shift timings for the workmen is to be changed from 8.00 a.m. to 4.30 p.m., 4.30 p.m. to 1.00 a.m. and 1.00 a.m., to 8.00 a.m. with a rest interval of ½ hour in each shift. That by notice dated 10-5-93 which was displayed on the notice board it was informed that the said timings have been approved by the Chief Inspectorate, Government of Goa. That even after getting approval from the Inspectorate of Factories, the changing of working hours from 7½ hours to 8 hours amounts to change in the service conditions. That the President of the Union wrote a letter to the Chief Inspectorate of Factories on 14-5-93 complaining to him that the new



shift timings will cause inconvenience to the workers. That the employer on 1-7-93 displayed another notice stating that ½ hour wages will be deducted if new shift timings is not observed. That the President of the union by letter dated 22-7-93 raised industrial dispute regarding change in shift timings and freezing of VDA before the Labour Commissioner, Panaji, and Dy. Labour Commissioner, Margao. That the union thereafter by letter dated 10-8-93 again raised a dispute before the Labour Commissioner regarding the change in shift timings and illegal deductions effected by the employer. That the management locked out the factory from 16-8-93 without given notice to the workmen or to the union. In the discussions held by the Dy. Labour Commissioner, Margao, the employer agreed to pay the wages for the month of July, 1993 without any deductions and agreed to start the work from 23-6-93. That thereafter the employer by letter dated 22-10-93 addressed to the Dy. Labour Commissioner, Margao, denied that they signed minutes before him and started harassing the workmen by not allowing them to sign the muster roll and by putting Privilege Leave in the column of signature w.e.f. 2-2-94. That the employer issued a notice dated 5-2-94 to the effect that the workers w.e.f., 7-2-94 will come in one shift and the others will proceed on leave and it was further suggested that the said arrangement will be on rotation basis which decision was taken by the employer arbitrarily without an discussion with the union. The union by letter dated 17-2-94 informed the Labour Commissioner about the illegal action taken by the employer. That by letter dated 11-1-97 the employer informed the President of the union that the management again decided to change the 3rd shift timing and bring the same as per the original shift timing. The union stated that due to the unjustified and illegal action of the employer the workmen have suffered irreparable loss and great hardships and inconvenience because of the change in the shift timings. The union stated that the action of the employer in changing the shift timings is illegal and unjustified and in contravention of the provisions of the law. The union therefore prayed that the action of the management of the employer in changing the hours of work of shift and thereby weekly working hours w.e.f., 13-9-93 be held as illegal and unjustified and the employer be directed to pay to the workers the difference in wages effective for the relevant period.

3. The employer filed written statement at Exb. 5. The employer stated that its action is legal and justified as the employer has given proper notice as required under the industrial law. The employer stated that by change in the timing the employer has maintained the required statutory limit for hours of work as applicable under the law. The employer denied that its action is to harass the workers on account of the charter of demands. The employer stated that it was justified in initiating action against the workers who did not adhere to the timings and as such the action of deduction of ½ hour wage was within the competence of the management. The employer stated that since its action is legal and justified the workers are not entitled to any relief and the reference

is liable to be rejected. The union thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties, following issues were framed at Exb. 7.

1. Whether the Party I proves that the action of the Party II in changing the hours of work of the shifts and thereby weekly working hours w.e.f. 30-9-93 in terms of the notice dated 8-9-93 is illegal and unjustified ?

2. Whether the Party I is entitled to any relief ?

3. What Award ?

5. My findings on the issues are as follows:

Issue No. 1: In the negative.

Issue No. 2: In the negative.

Issue No. 3: As per order below.

#### REASONS

*Issue Nos. 1 and 2:* Since the contention was raised by the union on behalf of the workmen that changing the hours of work of shift and thereby weekly working hours with effect from 30-9-93 as per notice dated 8-9-92 is not legal and justified the burden was cast on the union to prove the said contention. The Union was given several opportunities to lead evidence in the matter but in spite of the several opportunities given, no evidence came to be led on behalf of the union and ultimately the evidence of the union was closed on 7-5-2004. The employer submitted that since the union has failed to lead any evidence in the matter, the employer also does not wish to lead any evidence. In the circumstances, there is no evidence before this Tribunal either on behalf of the union or on behalf of the employer.

7. The reference of the dispute was made by the Government at the instance of the union since the demands were raised on behalf of the workmen. Thus, it is the Union who raised the industrial dispute and the same was referred to this Tribunal by the Government for adjudication. The Bombay High Court, Panaji Bench, in the case of V. N. S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu another, reported in FJR Vol. 71 at page 393 has held that the obligation to lead the evidence to establish an allegation made by a party is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provision of Rule 10-B of the Industrial Disputes Act which requires the party raising a dispute to file a statement of demands relating to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove contention raised by him and Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i.e. in the case of

V. K. Raj Industries v/s Labour Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

8. In the present case the dispute was raised by the union. Since it was at the instance of the union that the reference of the dispute was made by the Government, the burden was on the Union to prove that the action of the employer in changing the hours of work of the shifts and thereby weekly hours of work with effect from 30-9-93 was not legal and justified. As mentioned earlier, the union was given several opportunities to lead evidence in the matter but the union failed to do so. Therefore there is no material before me to hold that the action of the employer is not legal and justified. I, therefore hold that the union has failed to prove that the action of the employer in changing the hours of work of the shifts and thereby weekly hours of work with effect from 30-9-93 is illegal and unjustified. This being the case the workmen are not entitled to any relief. I therefore answer the issue Nos. 1 and 2 in the negative. Consequently, I hold that the action of the employer is legal and justified.

In the circumstances, I pass the following order.

#### ORDER

It is hereby held that action of the management of M/s. Christine Hoden (India) Pvt. Limited Cortalim, Goa, in changing the working hours of the shifts and thereby weekly hours of work with effect from 30-9-93 is legal and justified. It is hereby further held that the workmen are not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

#### Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 6-9-2004 in reference No. IT/65/2003 is hereby published as required by

Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 19th October, 2004.

#### IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/65/2003

Workmen rep. by,  
Gomantak Mazdoor Sangh,  
Shetye Sankul, 3rd Floor,  
Tisk, Ponda-Goa. ... Workman/Party I

V/s

M/s. Menezes Chemicals  
(Goa), P. Ltd.,  
Curti, Ponda-Goa. ... Employer/Party II

Workman/Party I - Represented by Shri P. Gaonkar.

Employer/Party II - Represented by Adv. Shri G. K. Sardesai.

Panaji, dated: 6-9-2004.

#### AWARD

In exercise of the powers conferred by sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 11-9-2003 bearing No. 28/39/2003-LAB referred the following dispute for adjudication of this Tribunal.

#### SCHEDULE

- (A) "Whether the following demands raised by the workmen of M/s. Menezes Chemicals (Goa) Pvt. Ltd., represented by Gomantak Mazdoor Sangh, are legal and justified?

#### Demand No. 1 Pay Scales:

##### Grade IV:

- A- 1750-60-2050-70-2400-80-2800-90-3250-95-3725-100-4225-105-4750.  
B- 1850-65-2175-75-2550-85-2975-95-3450-100-3950-105-4475-110-5025.

##### Grade III:

- A- 1950-70-2300-80-2700-90-3150-100-3650-110-4200-115-4775-120-5375.  
B- 2050-75-2425-85-2850-95-3325-105-3850-115-4425-120-5025-125-5650.



**Grade II:**

- A- 2150-80-2550-90-3000-100-3500-110-4050-120-4650-125-5275-130-5925.  
B- 2250-85-2675-95-3150-105-3675-115-4250-125-4875-130-5525-135-6200.

**Grade I:**

- A- 2350-90-2800-100-3300-110-3850-120-4450-130-5100-135-5775-140-6475.  
B- 2450-95-2925-105-3450-115-4050-125-4675-135-5350-140-6050-145-6775.

**Special Grade:**

- A- 2550-100-3050-110-3600-120-4200-130-4850-140-5550-145-6275-150-7025.  
B- 2650-105-3175-115-3750-125-4375-135-5050-145-5775-150-6525-155-7300.

**Demand No. 2: Flat Rise:**

Union demands that all the workmen shall be given the flat rise at the rate mentioned below:

Grade IV (A&B)	: Rs. 1200/-
Grade III (A&B)	: Rs. 1300/-
Grade II (A&B)	: Rs. 1400/-
Grade I (A&B)	: Rs. 1400/-
Grade Special (A&B)	: Rs. 1500/-

The above amounts should be added to the existing basic and thereafter fitted in the revised pay scale in the higher stage.

**Demand No. 3: Seniority increments:**

Union demands that the workmen should be given Seniority increments as mentioned below:

Service up to 3 years	: One increment.
Service from 3 years to 7 years	: Two increments.
Service from 7 years to 10 years	: Three increments.
Service from 10 years to 15 years	: Four increments.
Service from 15 years to 20 years	: Five increments.
Service from 20 years to 25 years	: Six increments.
Service from 25 years to 30 years	: Seven increments.
Service above 30 years	: Eight increments.

**Demand No. 4: FDA/Variable Dearness Allowance:**

Union demands that the FDA shall be paid at the rate of Rs. 2000/- at AICPI 1770 (1960=100) and thereafter VDA shall be paid at the revised rate of Rs. 4/- per point rise beyond 1770 points (1960=100) the computation of VDA shall be made quarterly based on the average consumer price index of preceding quarter. The amount of VDA upto 1770 points shall be merged in the Basic.

**Demand No. 5: House Rent Allowance:**

Union demands that HRA should be paid at the revised rate of 30% of Basic and Dearness Allowance as

the cost of accommodation is very high in Goa being a Tourist State.

**Demand No. 6: Education Allowance:**

The Union demands that the Education Allowance shall be paid at the rate of Rs. 500/- per workman per month.

**Demand No. 7: Conveyance Allowance:**

Union demands that all workmen shall be paid Conveyance Allowance at the rate of Rs. 850/- per month.

**Demand No. 8: Transport facility:**

Union demands that the free transport facility should be provided to these workmen who are presently not provided with this facility. The detail routes shall be given at the time of negotiations.

**Demand No. 9: Paid Holidays:**

Union demands that all the workman shall be granted paid holidays at the rate of 16 days per year. Union further demands that the festival holidays which fall on Sundays shall be changed to next day or one day earlier, which shall be finalized in consultation with the Union.

**Demand No. 10: Leave:**

Union demands that all the workers should be given leave on following basis:-

- Earned Leave:** Union demands that all the workmen should be given earned leave at the rate of 36 days E.L. per year with accumulation upto 150 days and leave shall be allowed to be taken 10 times in a year.
- Casual Leave:** Union demands that all the workmen should be given casual leave at the rate of 20 days per year with encashment facility.
- Sick Leave:** Union demands that all the workmen should be given sick leave at the rate of 24 days per year and accumulation upto 60 days.

**Demand No. 11: Leave Travel Assistance:**

Union demands that LTA should be paid at the revised rate of Rs. 6000/- per annum with minimum of four earned days leave. The amount shall be paid one week before the commencement of leave.

**Demand No. 12: Food Supply/Canteen Subsidy:**

Union demands that all the workmen shall be paid canteen subsidy at the rate of Rs. 750/- per month.

**Demand No. 13: Medical Allowance:**

Union demands that the workmen shall be reimbursed all the medical expenses incurred by him for self and shall be paid Rs. 5000/- per annum towards the medical

expenses for their dependents by the management. And in case of major sickness, the total amount shall be reimbursed.

#### **Demand No. 14: Promotion Policy:**

Union demands that separate promotion policy should be promulgated in consultation with the Union. The detailed promotion policy will be submitted to the management at the time of negotiations.

#### **Demand No. 15: Loan:**

Union demands that interest free loan Rs. 200000/- should be granted for house repair and construction of house. And Rs. 50,000/- to meet the expenses towards the purchase of household articles or marriage of self or his/her family member, scooter etc.

#### **Demand No. 16: Gifts:**

Union demands that workmen should be given service award as mentioned below:

Services upto 5 years gift worth Rs. 3500/- with service certificate.

Service from 5 years to 10 years gift worth Rs. 5000/- with service certificate.

Service from 10 years to 20 years: Gift worth Rs. 7500/- with service certificate.

Service above 20 years: Gift worth Rs. 10000/- with certificate.

#### **Demand No. 17: Domiciliary Treatment Allowance:**

Union demands that existing DTA should be revised and paid at the rate of Rs. 500/- per month.

#### **Demand No. 18: Seniority Fixed Dearness Allowance:**

Union demands that all the workmen shall be paid SFDA at the uniform rate of Rs. 800/- per month.

#### **Demand No. 19: Welfare Fund:**

Union demands that existing contribution shall be revised at the rate of Rs. 20/- per month and matching contribution should be remitted by the management.

#### **Demand No. 20: Yearly Gift:**

Union demands that all the workmen shall be given yearly gift at the time of festival of Rs. 3000/- each once in a year, to meet the additional expenses incurred by him for such festival.

#### **Demand No. 21: Out Station Allowance:**

Union demands that those workmen who are required to work on out station duty within Goa, they shall be paid the outstation allowance at the rate of Rs. 150/- per day. And Rs. 300/- per day for out of State duty.

#### **Demand No. 22: Payment of Gratuity:**

Union demands that all the workmen who have worked for more than 5 years shall be paid gratuity at the rate of 30 days wages per year of service.

#### **Demand No. 23: Supply of Raincoats/Umbrella and Safety Shoes:**

Union demands that the workmen shall be supplied with Raincoats of Duck Back, Gumboots of Swastik Make, Stage Brand Umbrella and Safety shoes of BATA make every year.

#### **Demand No. 24: Employment next to kin:**

Union demands that the kin of the workmen who have died or retired shall be given employment in the company.

#### **Demand No. 25: Bonus/Ex-Gratia:**

Union demands that all the workers shall be paid Bonus/Ex-gratia at the rate of 30% of gross wages every year before Diwali.

#### **Demand No. 26: Chemical/Hardship Allowance:**

Union demands that all the workers shall be paid Chemical/Hardship allowance at the rate of Rs. 250/- per month per workmen.

#### **Demand No. 27: Ambulance:**

Union demands that Ambulance should be provided at Factory.

#### **Demand No. 28: Up-Gradation:**

Union demands that those employees who could not get higher grade, such employees should be upgraded after 5 years in same grade.

#### **Demand No. 29: Five Days Week:**

Union demands that all the workers should be given five days week working in the factory as already staff and administration is enjoying the said facility.

#### **Demand No. 30: Shift Allowance:**

Union demands that those workers who work in shifts shall be paid shift allowance at the rate of Rs. 50/- per shift in third shift and Rs. 35/- per shift in second shift.

#### **Demand No. 31: Officiating Allowance:**

Union demands that officiating allowance should be paid at the rate mentioned below:

Grade IV to III	: Rs. 10/- per day
Grade III to II	: Rs. 15/- per day
Grade II to I	: Rs. 20/- per day
Grade I to Special	: Rs. 25/- per day

And if workers put more than 200 days officiating in the proceeding 12 months he should be given promotion.

**Demand No. 32: Festival Advance:**

Union demands that all the workers should be granted festival advance at the rate of one month gross salary once in a year which shall be recovered in 10 equal installments.

**Demand No. 33: Supply of tea & snacks in the 2nd shift:**

Union demands that the tea and snacks should also be given to the workers working in the 2nd shift.

**Demand No. 34: Rest Room:**

Union demands that the proper rest room facility should be provided in the factory premises.

**Demand No. 35: Sterile Allowance:**

Union demands that those workmen working in sterile area shall be paid sterile allowance at the revised rate of Rs. 20/- per day.

**Demand No. 36: Promotion B Grades:**

Union demands that those workmen who have put three years and more service in grade A, such workmen should be promoted in Grade B, without any conditions.

**Demand No. 37: Additional increments:**

Union demands that those workmen who have put more than 3 years service in Grade B, such workmen should be granted one additional increment as against the present five years.

**Demand No. 38:**

Union reserves the right to amend, add, delete any demands during the time of negotiation.

If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/65/2003 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workmen/Party I (for short, "Union") filed its statement of claim at Exb. 4 in support of its contention that the demands raised by it against the Employer/Party II (for short, "employer") are legal and justified. The employer filed written statement at Exb. 5 objection to the claim statement filed by the union. The employer denied that the workmen are entitled to any relief as the demands raised by the union on behalf of the workmen are not legal and justified. The union thereafter filed rejoinder at Exb. 6. On the pleading of the parties, issues were framed at Exb. 7 and thereafter the case was fixed for the evidence of the union. Accordingly, the union filed the affidavit in evidence of its Gen. Secretary, Shri P. Goankar. At the stage when the case was fixed for the cross examination of the union's witness-Shri P. Goankar, the parties submitted that they have arrived at an

amicable settlement and they filed the terms of the settlement dated 2-8-2004 at Exb. 12 along with an application praying for the passing of the award in terms of the said settlement.

I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the terms of the settlement are certainly in the interest of the workmen. I therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement dated 2-8-2004 Exb. 12.

**ORDER**

**1. APPLICABILITY:**

The terms and conditions of this Settlement shall be applicable to all the permanent workmen who are on the rolls of the company as on 1st September, 2001.

**2. PERIOD OF SETTLEMENT:**

Both the parties agree that this Settlement shall be in force for a period of three (3) years and six (6) months beginning from 1st September, 2001 and ending on 28th February, 2005 and shall continue to be in force unless terminated by either party in accordance with the provisions of law.

**3. WAGES REVISION-PAY SCALE:**

It is mutually agreed by and between the parties that the Grades shall be as follows:

**GRADE - I**

A- 950-50-1200-55-1475-60-1775-65-2100-70-2450-75-3200-80.

B- 1000-55-1275-60-1575-65-1900-70-2250-75-2625-80-3425-85.

Skilled Machine Operator, Skilled Mechanic, Skilled Electrician, Sr. Process Operator, Certified Boiler Operator, Certified Electrician, Electrician cum A/C Operator/Mechanic.

**GRADE - II**

A- 875-40-1075-45-1300-50-1550-55-1825-60-2125-65-2775-70.

B- 920-45-1145-50-1395-55-1670-60-1970-65-2295-70-2995-75.

Machine Operator, Electrician cum Wiremen, Mechanic, Process Operator, Packaged Boiler Operator cum Electrician, Utility Technician.

**GRADE - III**

A- 825-30-975-35-1150-40-1350-45-1575-50-1825-55-2375-60.

B- 850-35-1025-40-1225-45-1450-50-1700-55-1975-60-2575-65.

Helper, Lab Assistant, Watchmen.

**GRADE - IV**

- A- 750-23-865-28-1005-33-1170-38-1360-43-1575-48-2055-53.
- B- 790-28-930-33-1095-38-1285-43-1500-48-1740-53-2270-58.

Sweeper and General Attendant.

**GRADE SPECIAL:**

- A- 1050-60-1350-70-1700-80-2100-90-2550-100-3050-110-4150-120.
- B- 1150-65-1475-75-1850-85-2275-95-2750-105-3275-115-4425-125.

The promotion to the Special Grade shall be, on the basis of man power requirement of the Management and the ability of the Workmen to carry out all the jobs including partly maintenance work, independently as may be specified or required from time to time. The jobs may require change over, setting and operating and maintenance of machines and equipment or process at various stages.

The promotion to higher Grade will not be automatic. The Management will declare the vacancy and promote the workmen depending upon requirements of the process, work load, seniority, work performance, quality and quantity of work, behaviour, attendance in terms of regularity, punctuality, presence on the job, co-operation with superiors and colleagues etc. as assessed by the Management. The promotions will be based on merit cum compliance with Standard Operating Process and handling of raw as well as finished materials safely etc. The decision of the Management in this regard will be final.

All other conditions applicable to these grades shall remain unaltered and for the purpose of reference, the said conditions are reproduced hereinbelow:-

- i) All 'A' grades are substantive grades.
- ii) All 'B' grades are promotional grades.
- iii) Movement from one substantive grade to the other substantive grade will be on the basis currently in force against declared vacancies and not automatic.
- iv) Movement from Grade 'A' to Grade 'B' is linked to work performance, work behaviour, work-attendance etc. of 763 for non ESI covered workmen and 778 for ESI covered workmen in the preceding 3 years as assessed by the Management through a formal performance appraisal system, subject to workmen who have completed minimum service of 6 years in the said Grade. The decision of the Management in this regard will be final as it is a function of Management.
- v) It is further agreed between the parties that the creation of Special Grade and clustering of above machines in the Special Grade does

not mean that the workmen in other lower Grades will not operate these machines. The workmen will continue to operate these machines as being done hitherto without any additional benefits.

- vi) The above designations are illustrative and not exhaustive.

**FLAT RISE AND FITMENT:**

It is mutually agreed that the permanent workmen who are on the rolls of the company as on 1st September, 2001 will be entitled to a Flat Rise as follow:-

- i) Those confirmed workmen who are in Grade IV (A&B) shall be entitled to a flat rise of Rs. 200/- over their respective basic wages drawn by the concerned workmen as on 1-9-2001.
- ii) Those confirmed workmen who are in Grade III (A&B) shall be entitled to a flat rise of Rs. 225/-, over their respective basic wages drawn by the concerned workmen as on 1-9-2001.
- iii) Those confirmed workmen who are in Grade II (A&B) shall be entitled to a flat rise of Rs. 250/- over their respective basic wages drawn by the concerned workmen as on 1-9-2001.
- iv) Those confirmed workmen who are in Grade I (A&B) shall be entitled to a flat rise of Rs. 275/- over their respective basic wages drawn by the concerned workmen as on 1-9-2001.
- v) Those confirmed workmen who are in Grade Special (A&B) shall be entitled to a flat rise of Rs. 300/- over their respective basic wages drawn by the concerned workmen.

**FITMENT:**

On adding the flat rise to the basic wage as above, if the resultant amount does not fit into the step of the pay scale, then the same shall be fitted to the nearest higher step in the scale. The Seniority Increment if any as below will be added to resultant figure.

**SERVICE INCREMENT:**

It is mutually agreed that the confirmed permanent workmen on the rolls of the Company as on 01-09-2001 will be entitled to service increments as given below:

- i) Permanent workmen who have not completed 3 years of service as on 01-09-2001 will not be entitled to any service increment in their respective Grades.
- ii) Permanent workmen who have completed 3 years of service and more but have not

completed 9 years of service as on 01-09-2001 will be entitled to one increment in their respective Grades.

- iii) Such of the permanent workmen who have completed 9 years of service and more but have not completed 15 years of service as on 01-09-2001 will be entitled to two increments in their respective Grades.
- iv) Such of the permanent workmen who have completed 15 years of service and more but have not completed 20 years of service as on 01-09-2001 will be entitled to three increments in their respective grades.
- v) Such of the permanent workmen who have completed 20 years of service and more as on 01-09-2001 will be entitled to four increments in their respective Grades.

The new revised basic wage of the permanent workmen as on 01-09-2001 will be arrived at after adding Flat Rise, Fitment and Service Increment as mentioned above.

#### 4. DEARNESS ALLOWANCE:

##### i) Seniority Fixed Dearness Allowance:

It is mutually agreed between the parties that the current system of paying SFDA to such of the permanent workmen will continue during the subsistence of this settlement i.e. those workmen who are presently entitled to Seniority Fixed Dearness Allowance of Rs. 500/- and Rs. 300/- per month shall continue to be paid Seniority Fixed Dearness Allowance of Rs. 500/- p. m. and Rs. 300/- per month respectively.

##### ii) Fixed Dearness Allowance:

It is mutually agreed between the parties that the permanent workmen shall be paid Fixed Dearness Allowance of Rs. 2522/- per month at AICPI 2190, effective from 1-9-2001 with the merger of VDA of Rs. 882/- payable for the period 1-7-2001 to 30-9-2001.

##### iii) Variable Dearness Allowance:

It is mutually agreed by and between the parties that the permanent workmen shall be paid Variable Dearness Allowance at the rate of Rs. 2.10 per point rise/fall over and above AICPI 2190 (1960=100) effective from 1-9-2001. The computation of Variable Dearness Allowance shall be as per the present practice.

#### 5. HOUSE RENT ALLOWANCE:

It is mutually agreed by and between the parties that the present system of paying House Rent Allowance at the rate of 18% of basic wages of the workmen shall continue.

#### 6. TRANSPORT SUBSIDY:

It is mutually agreed by and between the parties that the Transport facility for the 3rd shift workers will continue to the extent it is provided at present on the date of signing of this agreement. It will not be extended beyond the present limits to cover other workmen and no transport facility will be extended to the general, 1st and 2nd shift workmen.

The Management agrees not to deduct Rs. 12.90 per night shift worked from the transport subsidy payable to the workmen attending 3rd shift with the effect from 01-04-2004. All other terms and conditions in this regard remain same.

It is mutually agreed that the permanent workmen shall be paid Transport Subsidy of Rs. 450/- per month effective from 1-9-2001 to 31-8-2003 and Rs. 475/- per month from 1-9-2003. The transport subsidy shall be deducted proportionately for unauthorized absence and Leave without pay.

#### 7. CANTEEN SUBSIDY:

It is mutually agreed that with effect from 1-9-2001, all permanent workmen covered under this Settlement will continue to be paid Canteen Subsidy of Rs. 12 per day attended. It is expressly agreed that the Union will not raise the issue of subsidy or running of the Canteen in view of the position of Law and also economic non-viability. All other provisions not spelt out here and as mentioned in the Settlement dated 13-07-1988 and 21-03-1992 shall remain unaltered.

#### 8. EDUCATION ALLOWANCE:

It is mutually agreed by and between the parties that all the permanent workmen shall be paid Education Allowance of Rs. 330/- per month with effect from 1-9-2001 up to 31-8-2002 and Rs. 353/- per month from 1-9-2002. The Allowance will be deductible prorata for unauthorized absence and leave without pay.

#### 9. DOMICILIARY TREATMENT ALLOWANCE:

It is mutually agreed by and between the parties that the permanent workmen covered by this Settlement shall be paid Domiciliary Treatment Allowance of Rs. 222/- per month effective from 1-9-2001.

The above said Allowance will be deducted pro-rata for unauthorized absence and or leave without pay.

#### 10. SHIFT ALLOWANCE AND SHIFT AWARD:

It is mutually agreed that permanent workmen shall continue to be paid Shift Allowance of Rs. 5.50/- per day worked for the second shift and Rs. 15/- per day worked for the third shift. It is also agreed that Shift Award, being a goodwill amount is not negotiable and there will be no change in Shift Awards Quantum of Rs. 9/- paid at present. All other provisions spelt out in this regard in Settlement dated 21-03-1992 shall remain unaltered.

**11. LEAVE TRAVEL ASSISTANCE:**

It is mutually agreed that from 01-09-2001 permanent workman covered by this Settlement shall continue to get Leave Travel Assistance of Rs. 3000/- per annum. This entitlement will be subject to the conditions prevailing at present which are as follows:

- i) A workman shall be eligible for LTA only if he has completed one year of continuous service and in terms of the of the current rules for claiming LTA.
- ii) LTA will be payable only if the workman proceed on authorised PL of a minimum period of 6 days specifically for this purpose and not against adjusted PL.
- iii) LTA will be paid on Calendar year basis for convenience and proper accounting.
- iv) LTA will not be payable if a workman ceases to be in the service of the Company on resignation. However, those workmen who have put more than 6 months in that calendar year, and who retire or expire will be entitled for LTA as a special case.
- v) LTA will not be considered for payment or calculation of overtime, gratuity, bonus, ESI contribution or any other allowances.

**12. MEDICAL BENEFITS/ESI SCHEME:**

It is mutually agreed by and between the parties that the permanent workmen who are not covered under ESI Scheme shall continue to get Rs. 1650/- only per annum with effect from 01-09-2001. Incase those workmen who are covered under the ESI Scheme such workmen will continue to get Rs. 260 - only per annum instead of Rs. 1650/- per annum. Other conditions in this regard remain same and will be in accordance with the current scheme as at present subject to the rules which are in force at present.

**13. LEAVE:****a) Privilege Leave:**

There will be no change in the quantum of Privilege Leave which at present is worked out on the basis of one day for every 12 days worked subject to the rules and provisions of the Factories Act. However, it has been agreed that such of the workmen who put in 260 days of attendance or more in a calendar year will get 2 days additional Privilege Leave. The accumulation of Privilege Leave shall remain unaltered.

**b) Sick Leave:**

It is mutually agreed by and between the parties that there will be no change in the quantum of Sick Leave i.e.:

- i) Workmen covered under ESI will be entitled to 9 days Sick Leave.
- ii) Workmen who are not covered under ESI will be entitled to 15 days Sick Leave.
- iii) Sick Leave is accumulable up to 3 years entitlement.

iv) Sick Leave can be encashed over and above 25 days.

- v) For availing Sick Leave the workman shall inform the Manager or the Supervisor in writing or orally through any person or by Telephone as soon as possible about the illness and probable duration of such absence from work. A leave application has to be submitted immediately on resumption on duty.

Further in support of Sick Leave exceeding 02 days a Medical Certificate clearly stating nature of illness, issued by Registered Medical Practitioner or ESI Panel Doctor should be produced by the workmen concerned. And while resuming the workman should produce Fitness Certificate from the Medical Practitioner. The workman will not be allowed to resume unless Fitness Certificate is produced for absence exceeding two days.

**c) CASUAL LEAVE:**

It is mutually agreed that there will be no change in the quantum of Casual Leave of 7 days per annum. The present practice of encashment will continue.

**14. AMBULANCE:** – The present practice will continue.

**15. PAID HOLIDAYS:**

All the workmen will be eligible for 09 common Holidays in a year and 03 Restricted Holidays. The 09 Holidays will be common for workmen and employees of the factory. In the event there is a disagreement in respect of common holidays, the Management's discretion and decision will be final. The procedure for availing Restricted Holidays will be as at present.

**16. FESTIVAL ADVANCE:**

The present practice of granting Festival Advance upto Rs. 1600/- once a year per workman which will be deducted in eight monthly installments succeeding months in which the advance has been paid shall continue.

**17. OFFICIATING ALLOWANCE:**

It is mutually agreed by and between the parties that if the workman working in a lower grade is asked to work on a substantive grade he will be paid Officiating Allowance for each of the day he has officiated in the higher grade as follows:-

Grade	Officiating Allowance per day worked
a) IV to III	Rs. 3.50/-
b) III to II	Rs. 4.00/-
c) II to I	Rs. 4.50/-

**18. RAINWEAR:**

It is mutually agreed that the issue of rainwear is need based and therefore the current practice will continue.



**19. WORKING ENVIRONMENT:**

The Safety of the Employees, Plant & Machinery are of paramount importance and both the parties shall protect it under any circumstances by following safety procedures and using safety devices such as safety Helmets, Aprons, Masks, Safety Goggles, Gloves, Gumboots etc. Further the Management will ensure conducive working environment to its employees in accordance with the provisions of law and other Industry practices.

**NOTE:-**

Transport Subsidy, Sundry Allowance, Education Allowance, Medical Allowance, Shift Allowance shall not be taken into account for calculating indirect benefits like Provident Fund, Gratuity, Bonus, Leave encashment etc.

**GENERAL CLAUSES:**

The Settlement is in full and final settlement of all the demands raised by the Union and Workmen in their Charter of Demands dated 5th October, 2001. Those demands which are not specifically dealt with herein, were discussed and stand withdrawn.

- 1) Benefits under the Settlement shall apply to all the permanent workmen who are on the rolls of the Company as on 01-09-2001 and continue to be in the employment till the date of signing of the Settlement.

All the workmen who avail the benefits arising out of this Settlement shall pay 5% of their total arrears arising out of this Settlement as donation to the Union.

The Company shall deduct the above mentioned amount of donation from the arrears payable to the workmen and pay the same by cheque to "Gomantak Mazdoor Sangh".

- 2) The Union and the workmen individually and jointly, agree not to raise or pursue any dispute in respect of any demand whether specifically covered or not pressed or pursue any demand involving financial burden on the Company directly or indirectly during the subsistence of the Settlement except such ones that may involve specific implementation of this Settlement and law in force.

It is agreed that the existing facility, benefits, privileges and other conditions of the services which are presently enjoyed by the workmen will remain unchanged except to the extent agreed in this settlement or as mentioned in minutes.

It is agreed by and between the parties to resolve the difference, if any, through mutual discussions and constitutional means without resorting to any direct actions such as strike, go slow, lockout or unfair labour practices, etc.

- 3) It is also mutually agreed by and between the parties that other terms and conditions which are

not covered by this Settlement shall remain unaltered.

- 4) a) The Union and the workmen agree and appreciate that the Management has agreed to revise the wages and allowances of the workers though it was beyond its capacity. The said upward revision in Wages, Allowances & Benefits is agreed specifically in view of the assurances and commitment of Union and workmen that they will co-operate with the Management in bringing out the Company from existing difficulties. Further the Union and the workmen agree that the Company should retain its competitive status, earning capacity and this can be achieved through greater operational efficiency, increasing the productivity and reduction of wastage.

Towards this the Union and workmen agree to co-operate with the Management at all times in improving works methods as per the minutes signed separately in this regard, implementation of all measures that may be introduced by the Management i.e. by change or modifications in work flow, work planning, work simplification and procedures, new machinery and equipment for improving current output and by identifying unnecessary work, cutting down such work as may be deemed necessary by the Management.

b) The Union and workmen also agree to maintain strict discipline at the work place, will not encourage any unfair labour practice, will follow safety norms and co-operate with Management in maintaining flexibility in work place by working in any area/department irrespective of their grades/Designation and or normal work culture, whenever it is required due to exigencies of work or lack of work and there will be no refusal of work.

c) The Union and workmen agree with the Management that the existing man power has to be utilized at its optimum level in manufacturing process. Towards this the Union and workmen will co-operate with the Management in increasing the output and reducing wastages by working in new system as and when introduced.

d) The Union and workmen agree that they will ensure punctuality and regularity in attendance and will not remain unauthorisedly absent from work generally and specifically during the festivals and help the Management to achieve the production target.

e) The workmen will strictly adhere to the working hours by starting the work at the commencement of the shift and will not leave the work place without explicit permission of their superiors.

- 5) Both the parties agree that in case of any individual/ /groups grievances, efforts will be made by both the parties for resolution of the same by mutual

discussions without either party resorting to any unilateral action including that of work stoppage until the grievances are discussed.

In this effort a meeting between the Management representatives and Union representatives will be conducted as required. It is also agreed between the parties that in the event they are not able to arrive at a mutually acceptable solution both the parties will follow constitutional and legally established machinery for the Settlement of such disputes.

- 6) The arrears arising out of this Settlement shall be paid as under, in two installments after adjusting the Interim Relief paid to the workmen from 1-6-2003 till date from the 2nd Installment.

- a) 60% of the arrears will be paid by 10-9-2004.
- b) 40% of the arrears will be paid by 21-12-2004.

- 7) It is agreed by and between the parties that in view of amicable settlement of Charter of Demands, the parties shall jointly file this Settlement praying the Honourable Presiding Officer of the Industrial Tribunal to pass the consent award as per the terms of this Settlement, in the pending dispute of Charter of demands Ref: IT/65/2003.

- 8) It is agreed between the parties to file the compliance report with the appropriate authority under the provisions of the Industrial Disputes Act, 1947.

No order as to costs. Inform the Government accordingly.

Sd/-  
**(Ajit J. Agni),**  
Presiding Officer,  
Industrial Tribunal.

#### Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 29-10-2004 in reference No. IT/99/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 22nd November, 2004.

#### IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/99/99

Workmen, earlier represented by  
the President, Kamgarancho Ekvott  
and now represented by  
The General Secretary, Goa Trade &  
Commercial Workers Union,  
Velho Building,  
Panaji-Goa.

... Workmen/Party I

V/s

M/s. Pushparti Packs Limited,  
Thivim Industrial Estate,  
Bardez-Goa.

... Employer/Party II

Party I/Workmen - represented by Adv. Shri Suhas Naik.

Party II/Employer - represented by Adv. Shri M. S. Bandodkar.

Panaji, dated: 29-10-2004.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Government of Goa by order dated 3rd September, 1999 bearing No. IRM/CON/MAP/ / (48)/98/4234 referred the following dispute for adjudication by this Tribunal.

"Whether the demand of the workmen represented by 'Kamgarancho Ekvott' for payment of a minimum wage of Rs. 2500/- per month, with V.D.A. of Rs. 2/- per rise above 1725 points (CPI-1960=100), by M/s. Pushparti Packs Limited, Thivim Industrial Estate, Karaswada, is legal and justified.

If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/99/99 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workmen/Party I (for short, "Union") filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the Union are that the Employer/Party II (for short, "employer") owns a factory in Thivim Industrial Estate, Karaswada, Goa, and it is engaged in manufacturing of packaging material of various types, lamination work, printing work, slitting work etc. That the employer pays very poor wages to the workmen which are not sufficient to maintain the worker himself. That the workers do not draw total emoluments of more than Rs. 2000/- each. That the wages paid to the workmen are below the poverty line wages fixed by Government of Goa and the employer does not pay any VDA to the workmen. That the Government of Goa has not fixed minimum wages for the said factory but has fixed poverty line wages as Rs. 25,000/- p.a., for the State of Goa for the purpose of availing benefits under various Government schemes for those below poverty line. That it is well settled that the wages paid to the workers have to be above

poverty line wages whether the company makes profit or not. The union contended that since the wages paid to the workers are below the poverty line wages fixed by the Government of Goa, they are entitled for fixation of minimum wages above poverty line wage of Rs. 25,000/- p.a. The union claimed that its demand for payment of minimum wage of Rs. 2500/- p.m., with VDA of Rs. 2/- per point rise above 1725 points (CPI Base 1960=100) be granted as the same is fair and just.

3. The employer filed written statement at Exb. 5. The employer stated that there is no union named Kamgarancho Ekvott existing in the company and no workers employed by the company are the members of the said union. The employer stated that it has received a letter from the workers stating that they have resigned from the membership of Kamgarancho Ekvott and that the said union has no authority to represent them before any authority including before this Tribunal and any authority if given by them the said authority stands withdraw. The employer stated that the reference made by the Government is bad in law and not maintainable and the union Kamgarancho Ekvott has no authority to represent its workers and on this ground alone the reference is liable to be rejected. The employer denied that the wages paid to the workers are poor wages or that the said wages are not sufficient to maintain the workers. The employer denied that the workers do not draw the total emoluments of more than Rs. 2000/- p.m., or that the service conditions of the workers are very poor. The employer denied that the wages paid to the workers are below poverty line wages fixed by the Government of Goa. The employer stated that the workers are not entitled to VDA. The employer stated that having regard to the Industry cum Region Principle, capacity to pay and comparable units the employer is paying fair and proper wages to the workers. The employer denied that the Government of Goa has fixed the poverty line wages of Rs. 25,000/- p.m. The employer denied that there is any settled law that the workers are required to be paid wages above the poverty line wages whether the company makes profit or not. The employer stated that no justification has been given by the union for its demand of fixing the minimum wages of Rs. 2500/- p.m., for each worker with VDA of Rs. 2/- per point rise above 1725 points (Base 1960=100). The employer stated that the union is not entitled to any relief as claimed and the reference is liable to be rejected. On the pleadings of the parties, issues were framed at Exb. 6.

4. After the issues were framed the case was fixed for recording the evidence of the union. Before the evidence was recorded Shri Subhas Naik who was representing the Union/Workmen filed an application dated 13-11-2000 at Exb. 8 stating that the workers have become the members of another union namely Goa Trade & Commercial Workers Union. He therefore prayed that the said union be made a party to the present dispute and union namely Kamgarancho Ekvott who was then representing the workers be allowed to withdraw from the present dispute. Notice of the said application was given to Goa Trade & Commercial Workers Union for

filing its say on the said application filed on behalf of Kamgarancho Ekvott. In pursuance to the said notice Adv. Shri Suhas Naik appeared on behalf of Goa Trade & Commercial Workers Union and admitted that the workers had become the members of the said Union and that the said union has no objection for allowing the application filed by Kamgarancho Ekvott and he made an endorsement to that effect on the application filed by Kamgarancho Ekvott. The employer filed reply at Exb. 9 objecting to the said application. After hearing the parties, this Tribunal passed an order dated 14-1-2003 holding that Goa Trade & Commercial Workers Union is liable to be allowed to represent the workmen in the present reference and not Kamgarancho Ekvott. This Tribunal further held that there is no question of adding or impleading Goa Trade & Commercial Workers Union as a party to the proceedings but union Kamgarancho Ekvott is liable to be substituted by the said union and in the circumstances the Workmen/Party I shall be described as "Workmen, earlier represented by the President, Kamgarancho Ekvott and now represented by the General Secretary, Goa Trade & Commercial Workers Union, Velho Building, Panaji-Goa." Thus the application filed by Kamgarancho Ekvott stood disposed of in terms of the above. Since by order dated 14-1-2003 the union Kamgarancho Ekvott was substituted by Goa Trade & Commercial Workers Union, the issue No. 1 which was framed earlier was framed as follows at Exb. 11.

Issue No. 1. Whether the Party I/Union, Goa Trade & Commercial Workers Union, proves that earlier Kamgarancho Ekvott had the authority to represent the workers of the Party II in the present reference and now it has the authority to represent them?

5. After the issue No. 1 was reframed as stated above, the case was fixed for recording the evidence of the workmen. Several opportunities were given to the Union/Workmen to lead evidence in the matter but no evidence came to be led on behalf of the Union/Workmen. On 11-1-2004 Adv. Shri Suhas Naik, representing the union filed an application stating that the union is not able to examine the workmen on whose behalf the dispute was raised as the workmen have left the place of work on account of the closure of factory and their addresses are not available. He prayed that one more opportunity may be granted to the union to lead evidence on behalf of the workmen. Since the union was given several opportunities to lead evidence in the matter and last opportunity was given to the union to lead evidence on 11-10-2004, this Tribunal passed an order rejecting the adjournment application filed by the union and closing the evidence of the union. Thereafter Adv. Shri S. K. Manjrekar submitted on behalf of the employer that employer also does not want to lead any evidence in the matter as burden was on the union to prove that its demand for minimum wages of Rs. 2500/- per month to each worker with VDA of Rs. 2/- per point rise above 1725 points (CPI 1960=100) is legal and justified. He submitted that since the union

has failed to lead any evidence the reference cannot be answered in favour of the union.

6. The reference of the dispute was made by the Government at the instance of the union since the demand was raised by the union on behalf of the workmen. Thus, it is the Union who raised the industrial dispute and the same was referred to this Tribunal by the Government for adjudication. The Bombay High Court, Panaji Bench, in the case of V.N.S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR Vol. 71 at page 393 has held that the obligation to lead the evidence to establish an allegation made by a party is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provision of Rule 10-B of the Industrial Disputes Act which requires the party raising a dispute to file a statement of demands relating to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove contention raised by him and Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i.e. in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will be not entitled to any relief.

7. In the present case the dispute was raised by the union. Since it was at the instance of the union that the reference of the dispute was made by the Government, the burden was on the Union to prove that the demand raised by it on behalf of the workmen for payment of minimum wage of Rs. 2500/- per month with VDA of Rs. 2/- per rise above 1725 points (CPI-1960=100) is legal and justified. As mentioned earlier, the union was given several opportunities to lead evidence in support of its contention that the above demand raised by it is legal and justified. However, no evidence came to be led on behalf of the union and its evidence had not been closed in the circumstances mentioned earlier. Therefore, there is no material before me to hold that the demand raised by the union against the employer is legal and justified. In the circumstances, the reference cannot be answered in favour of the union. I, therefore hold that the union has failed to prove that the demand raised by

it against the employer is legal and justified. This being the case the workmen are not entitled to any relief.

In the circumstances, I pass the following order.

#### ORDER

It is hereby held that the demand of the workmen for payment of minimum wage of Rs. 2500/- per month with VDA of Rs. 2/- per rise above 1725 points (CPI-1960=100) by M/s. Pushparti Packs Limited, Thivim Industrial Estate, Karaswada, is not legal and justified. It is hereby further held that the workmen are not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

#### Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 3-11-2004 in reference No. IT/53/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 22nd November, 2004.

#### IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/53/2002

The Workmen,  
Rep. by Gomantak Mazdoor Sangh,  
Shetye Sankul-Tisk-Ponda-Goa. ... Workmen/Party I

V/s

M/s. Unidiam Abrasives Ltd.,  
L-4, Industrial Estate,  
Verna-Goa. ... Employer/Party II

Workmen/Party I - represented by Shri P. Gaonkar.

Employer/Party II - Ex-parte.

Panaji, dated: 3-11-2004.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section 1 Section 10 of the Industrial Disputes Act,

1947 (Central Act 14 of 1947) the Government of Goa by order dated 30-7-2002 bearing No. 28/3/2001-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Unidiam Abrasives Ltd., Industrial Estate, Verna in terminating the services of below mentioned workmen with effect from 10-2-2001, is legal and Justified?

- (1) Shri Deepak B. Pal Dessai, Sr. Engineer.
- (2) Shri Kallimulla, Sr. Engineer.
- (3) Shri Vishwas Naik, Operator.
- (4) Shri Satish Sawant, Operator.
- (5) Shri Yogendra Shirodkar, Operator.
- (6) Shri Felip Travares, Operator.
- (7) Shri Anil R. Naik, Operator.
- (8) Shri Succoro Colaco, Operator.
- (9) Shri Chandu Kolambkar, Operator.
- (10) Shri Parash Dessai, Sr. Operator.
- (11) Miss Reshma Bandodkar, Sr. Operator.
- (12) Miss Safira Fernandes, Steno Typist.
- (13) Miss Carmina Rodrigues, Jr. Officer.
- (14) Miss Hema Desai, Operator.
- (15) Miss Reshmi Naik, Operator.
- (16) Miss Sangeeta Kholkar, Operator.
- (17) Miss Caterina Pereira, House Keeping.
- (18) Miss Joanita Fernandes, House Keeping.

If, not, to what relief the above workmen are entitled?

2. On receipt of the reference a case was registered under No. IT/53/2002 and registered A/D notice was issued to the parties. The workmen/Party I (for short "Union") received the said notice and put in its appearance. However, the registered A/D notice issued to the Employer/Party II (for short "Employer") was returned unserved with postal remark "Closed". Therefore upon application made by the Union the employer was served by substituted service by pasting the notice on the gate of the factory premises of the employer. Since none appeared on behalf of the employer on 10-1-2003, the case was proceeded ex-parte against the employer on the said date.

3. The Union filed claim statement at Exb. 3. The facts of the case in brief as pleaded by the Union are that the employer is having its factory at Verna Industrial Estate, Verna-Goa and the employer is engaged in business of manufacturing engineering items. That the workmen named in the present reference (for short "workmen") were employed in the factory of the employer and they were in continuous employment till their services were terminated from 10-2-2001. That the employer did not pay to the workmen their wages for the month of January, 2001 and when they approached the Dy. Labour Commissioner, Margao, on 8th February, 2001 they were told to put their grievance in writing. That on 10th February, 2001 the employer refused employment to the workmen and as such they approached the union who raised the dispute before the Dy. Labour Commissioner

vide letter dated 16-2-2001. That the employer did not participate in the conciliation proceedings and therefore the matter ended in failure. That the after refusal of employment the employer shifted their machinery at Kundaim started production with new workers. The Union contended that the termination of service of the workmen by the employer with effect from 10-2-2001 is illegal and unjustified as no notice was given to them, nor they were given notice pay nor they were paid their legal dues. The union claimed that the workmen are entitled to reinstatement in service with full back wages and continuity of service.

4. As mentioned earlier, the case had proceeded ex-parte against the employer, and consequently only the evidence of the union is on record. The union filed the Affidavit in evidence of its General Secretary Shri P. Gaonkar as also that of the workers Shri Satish Sawant, Shri Kathimulla Mulla, Shri Yogendra Shirodkar, Mrs. Esha Karekar alias Reshma Bandodkar and Mrs. Vini Vaz alias Hema Desai. Shri Satish Sawant also examined himself before this Tribunal and produced his appointment letter at Exb. W-1, confirmation letter at Exb. W-2, Provident Fund Slip at Exb. W-3 and copy of the wage register at Exb. W-4. There is no challenge to the contention of the union that the services of the workmen were terminated by the employer with effect from 10-2-2001. The Union in the claim statement stated that after the services of the workmen were terminated the employer shifted their machinery at Kundaim and started the production with new workers. The workmen in their Affidavitary evidence also stated the same fact. However, no evidence has been produced by the union and the workmen to prove that after the closing of the factory at Verna, the employer shifted the machinery at Kundaim and started the production there with new workers.

5. Shri Puti Gaonkar, representing the workmen admitted in the course of his arguments that the employer has closed their factory at Verna Industrial Estate, Verna-Goa. This is also evident from the fact that the registered A/D notice issued to the employer at the address of their factory at Verna was returned unserved with postal remark "closed". Shri P. Gaonkar fairly admitted in the course of his arguments that the factory at Verna was closed from the date the services of the workmen were terminated. Therefore the factory of the employer was closed from 10-2-2001. As mentioned earlier, there is no evidence on record to show that after closing the factory at Verna, the employer shifted the machinery at Kundaim and started the production there with new workers. It is therefore obvious that the termination of the service of the workmen was on account of the closing down of the factory by the employer with effect from 10-2-2001. Therefore if at all, the workmen would be entitled to only closure compensation. In the present case the provisions of chapter V B of the Industrial Disputes Act, 1947 which deals with closure cannot be applied to the employer because there is no evidence that the employer was

employing more than 50 workers. Therefore what is applicable is the provisions of sec. 25FFF of the said Act. As per the said section a workman who has been in continuous service of not less than one year before the date of closure is entitled to notice and compensation in accordance with the provisions of Sec. 25F of the Act as if the workman has been retrenched. In the present case the union has stated in the claim statement the date of appointment of each workman and the last wage drawn by him. There is no challenge to the claim statement of the union. As per the date of appointment given in the claim statement, each workman was in continuous service for more than one year as on the date when the factory was closed and the services of the workmen were terminated. Therefore the workmen are entitled to the compensation as provided under sec. 25F of the Industrial Dispute Act, 1947.

6. It is the contention of the union that the workmen were not given notice, nor they were paid notice pay nor retrenchment compensation. Closure is not the same as retrenchment. In the case of retrenchment unless prior conditions as laid down in Sec. 25F of the Industrial Act, 1947 are complied with, the retrenchment is illegal. The Supreme Court in the case of Santosh Gupta V/s State Bank of Patiala reported in AIR 1980 SC 1219 has held that termination of service of the workman as a consequence of closure is to be treated as retrenchment for the purpose of notice, compensation etc. This means that it is treated as retrenchment only for the purpose of notice and payment of retrenchment compensation as per sec. 25F of the Industrial Disputes Act, 1947. In

the case of M/s. Avon Services Production Agency Pvt. Ltd., V/s Industrial Tribunal, Hariyana reported in AIR 1970 SC 170, the Supreme Court has held that giving of notice and payment of compensation as provided in sec. 25F of the Act is not a condition precedent in the case of closure as otherwise it is in the case of retrenchment. This being the case the termination of service of the workmen, which is on account of closure of the factory, without giving them prior notice or without giving them notice pay or retrenchment compensation will not render the termination illegal and unjustified. The workmen would be entitled to only closure compensation as provided under Sec. 25F of the Industrial Disputes Act, 1947.

In the circumstances I pass the following order.

#### ORDER

It is hereby held that the action of the management of M/s. Unidian Abrasives Ltd. Industrial Estate, Verna in terminating the services of workmen mentioned in the order of reference is legal and justified. It is hereby held that the workmen are entitled to the closure compensation as provided under sec. 25F of the Industrial Disputes Act, 1947.

No order as to costs. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.